Office of Inspector General

Texas Health and Human Services Commission

Douglas C. Wilson, CPA, CIG, Inspector General

Performance Audit Report

Texas Pregnancy Care Network

May 6, 2013

OIG Report No. 12-55-000001A-TP-01

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OFFICE OF INSPECTOR GENERAL

TEXAS HEALTH & HUMAN SERVICES COMMISSION

DOUGLAS C. WILSON, CPA, CIG
INSPECTOR GENERAL

May 6, 2013

Mr. John McNamara, Executive Director
Texas Pregnancy Care Network
6101 West Courtyard Drive
Building 2, Suite 200
Austin, TX 78730

Dear Mr. McNamara:

The Texas Health and Human Services Commission (HHSC), Office of the Inspector General (OIG), Audit Section has completed the audit report for the Texas Pregnancy Care Network (TPCN) contract.

The objectives of the audit were to test for compliance with the contract terms and conditions as well as to address constituent concerns. The results of our work along with management responses and auditor follow up comments have been incorporated into this final report.

I would like to thank you and your staff for all the cooperation extended to OIG in performing this engagement. If you have any questions, please call Bobby Lane, Manager, Contract Audit Unit, at (512) 491-4058 or by e-mail at Bobby.Lane@hhsc.state.tx.us.

Sincerely,

Gwendolyn D. McDade

Gwendolyn D. McDade, CPA
Deputy Inspector General of Compliance
Office of Inspector General

EXECUTIVE SUMMARY

The Health and Human Services Commission (HHSC) Office of Inspector General (OIG), Audit Section, has completed its performance audit of Texas Pregnancy Care Network (TPCN).

Results ***(Statement of Findings)***

We noted the practice of a surcharge deducted from each Service Provider's payment. We noted that TPCN can more clearly define and quantify its objectives and deliverables regarding its contract with HHSC. We also noted two instances of non compliance with travel policies as published in the Texas Health and Human Services Travel Policies and Procedures as interim published in 2005. These matters are discussed in further detail in the Detailed Findings and Recommendations section of this report.

Objective ***(Subject)***

The objectives of the audit were to determine if TPCN complied with the terms and conditions contained within its contract with the HHSC, Office of Community Access & Services (HHSC-CAS) for implementation of the Texas Alternatives to Abortion program and to address concerns contained in a constituent letter dated May 10, 2012.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Background

In accordance with Section 50 Special Provisions Article II, S.B. 1 79th Texas Regular Legislative Session, HHSC entered into a contract with TPCN to fulfill the following objectives:

1. Specify and develop a program of coordinated services and supports for female expectant mothers, including expectant mothers who are undecided and who are considering alternatives to abortion in a secure, healthy and nurturing environment;
2. Identify and enable the participation of skilled, qualified providers of such services;
3. Implement and administer the program on a statewide basis;
4. Ensure vendor and provider accountability and consumer satisfaction;
5. Develop a flexible and responsive relationship with HHSC to achieve these mission objectives; and
6. Provide for clearly defined goals supported by detailed task requirements and performance measures.

TPCN serves as the conduit to recruit and retain a network of contracted service providers throughout Texas that provide counseling, mentoring and other support for women facing an unexpected pregnancy. The services provided by the service providers are free of charge to qualifying women and men. This agreement was fully executed on September 2, 2009 for the period ending August 31, 2011.

Summary of Scope and Methodology (*Summary of Activities Performed*)

The audit of TPCN covered the period from September 1, 2009 through August 31, 2011. The scope of the audit was to test compliance with the contract terms and conditions and to address concerns contained in a constituent letter dated May 10, 2012.

The methodology employed during this performance audit included objectively reviewing and analyzing various forms of documentation, conducting interviews and observations, and other tests necessary to achieve the objectives of the audit. See Appendix A for the detailed Objectives, Scope, and Methodology.

TPCN's full response is included in Appendix B and is incorporated by reference herein. OIG considered TPCN's comments regarding the scope of the audit contained in Appendix B. However, OIG's position remains unchanged.

DETAILED FINDINGS AND RECOMMENDATIONS

FINDING 1: DISCONTINUE SERVICE PROVIDER SURCHARGE

During our review of TPCN payments to service providers, we found that TPCN deducted three percent or approximately $184,135.06 from the service provider's total invoices for the audit period. The deductions were composed of two parts:

a. One percent is deducted from each service provider's invoice to pay Real Alternatives, the company providing forms and data processing systems used by the service providers to record client encounters at the sub-contractor's sites. Real Alternatives also provides support to TPCN for report production. The one percent deduction is used to pay costs related to service provider use of the RAPID Real Alternatives Program and Instructional Design (RAPID) system. The estimated cost of the use of the RAPID system is approximately $61,316.97.
b. Two percent, which is approximately $122,818.09, is deducted and allocated to TPCN Corporate. According to management, the amount is retained by TPCN to support the following program activities:
    1. Ensure TPCN monthly obligations can be met, when reimbursements from HHSC are not as timely as expected by TPCN,
    2. Ensure that year end payroll and other expenses of TPCN can be met,
    3. Cover the costs for pregnancy kits and developing learning materials which are made available to the providers,
    4. Office overhead expenses,
    5. Support 11 conference calls and one in person board meeting per year. The amount can be used for travel; however, the board members seldom claim any expenses related to the Board meetings, and
    6. Reimburse the subcontractors at year-end on a pro-rata basis as it relates to the subcontractors annual budget to compensate for prior budgetary adjustments, funds permitting.

We reviewed the service provider contract and noted in the Payment Terms that service providers agree to remit to TPCN three percent (3%) of the service provider's reimbursement under this agreement. The contract requires these funds to be used by TPCN to enlarge and enhance alternatives to abortion services and allows TPCN to deduct this assessment each month from the reimbursement it pays to the service provider. The service providers agree to the terms of the contract in order to participate in the program.

TPCN has an administrative budget of approximately 10% of the total contract amount, with a ceiling of 15%. TPCN's current administrative budget, in addition to the amounts assessed from each service provider causes administrative expenses to approach approximately 11%, still within the 15% ceiling.

TPCN's current budget contains three components: 1) Project Administration, 2) Statewide Information, Outreach, Education and Referral Programs and Services, and 3) Client services. This budget model provides sufficient clarity in purpose and the ability to effectively identify costs by type. Therefore, the need to impose a surcharge is avoidable when all expenses may be classified into the existing budget model.

Recommendation:

We recommend that TPCN amend its budget to eliminate the surcharges and include any projected administrative or educational costs into the appropriate components of the existing administrative budget.

We understand the efficiency and effectiveness gained in utilizing the RAPID system. However, we recommend that TPCN amend its budget to eliminate the surcharges used to cover the costs of the RAPID system. We further recommend that the services provided by Real Alternatives be acquired through a fee-for-service contract with costs allocated within the appropriate component of the existing contract budget.

Developing the budget in this manner will eliminate questionable surcharges and provide for improved transparency and accountability in the financial activities of TPCN.

Management Response:

1. Finding 1 is not a finding of non-compliance. *"Finding" 1 does not present any finding of noncompliance with the TPCN/HHSC contract. In fact, the Program Advancement Fee is not in any way a contract violation or a violation of HHSC policies. If a finding was actually presented, OIG would ask for the Program Advancement Fee to be returned to HHSC. Obviously, it did not.*

2. The Program Advancement Fee is structured to save Texas taxpayers money. *Once a service provider receives its monthly reimbursement for services provided to eligible Program clients, these funds are 100% earned (because the services have already been provided), and legally become a part of the service provider's general revenues, along with all of its donations from private sources and other funds. It is from this general compilation of funds that the Program Advancement Fee is paid to TPCN from Service Providers. Service providers agree to cover those costs because they are the entities earning the vast majority of the funds under the Program and which benefit directly from continuation of the Program and its growth. OIG would have Texas taxpayers pay for these additional costs. Texas taxpayers should NOT have to pay these additional costs since they are already paying the direct costs of the services.*

3. Replicating the Pennsylvania Model. *TPCN was successful in procuring the original contract and the renewal specifically because it was able to license the Pennsylvania program from Real Alternatives. HHSC wanted to ensure that the program was successful, and it studied the Pennsylvania program and knew that it had withstood public scrutiny, media scrutiny, and regulatory scrutiny. Therefore, TPCN was charged with replicating the Pennsylvania program in Texas. Real Alternatives licenses its program to TPCN and TPCN operates the program exactly as Real Alternatives does. In fact, Real Alternatives introduced the Program Advancement Fee model to TPCN, and contractually requires that TPCN use it. Real Alternatives has the following to say about OIG's "Finding" 1: "We find it unusual a government audit would be penalizing TPCN for enhancing a state program with private funds, giving the program financial cash flow protection, as well as ensuring complete ethical and scrupulous contract compliance. In fact, the Pennsylvania Department of Public Welfare remarked the Program Development and Advancement Contract Language was a good idea and they believed it 'was none of their business anyway' since the Service Providers agreed to pay the fee AFTER they earned their funds monthly from the statewide program."*

4. RAPID contract is a fee for services contract. *The report states that TPCN should acquire Real Alternatives services through a fee for services contract. In fact, the contract between TPCN and Real Alternatives is a fee for services contract, which is paid monthly for the use of the billing and program system. This fee was approved by HHSC in both contracts with TPCN.*

5. HHSC has been aware of Program Advancement Fee since Program's inception. *The Program Advancement Fee is not new. It has been discussed and explained in depth to HHSC's program*

6. OIG has received independently audited financial statements from TPCN since the Program's inception. *TPCN submits its audited financial statements directly to OIG annually. If OIG had any questions about the financial policies and structure of TPCN as presented in TPCN's financial statements, it should not have waited seven years to ask them. TPCN would assume that OIG's silence indicates that it had no concerns about the financial dealings of TPCN. OIG's recommendation to discontinue the Program Advancement Fee is a chilling overreach of governmental authority in that it wants to subject non-governmental funds to scrutiny and regulation. Just as OIG has no authority to dictate how its employees or TPCN employees spend their paychecks, it does not have authority to regulate or dictate funds that are not received from government programs. The Program's service providers validly earn 100% of their funds prior to their reimbursement. Once those funds are received, they are not subject to audit by HHSC or OIG, and are not subject to HHSC's Travel Policy and Procedures. For all of the reasons stated above, TPCN disagrees with "Finding" 1.*

Auditor's Follow Up Comments:

OIG is not aware of receiving audited financial statements from TPCN on an annual basis as mentioned in response Number 6 to this finding. The financial statements obtained by OIG were strictly related to the scope of this audit period for fiscal years 2010 and 2011.

FINDING 2: ENSURE COMPLIANCE WITH TRAVEL POLICY AND PROCEDURES

In our sample of transactions tested, we found one transaction for reimbursement for a meal that occurred in the headquarters city for a TPCN employee for the amount of $32.99. Page 20 of the HHSC Travel Policy and Procedures, Interim published in 2005 that provides guidance for eligible expenses for meals. Meal expenses are reimbursed if they are incurred on a day that the traveler conducts state business outside of his/her designated headquarters with overnight lodging. The meal in question occurred in the employee's headquarters city. See Appendix B.

We also noted that two TPCN employees were reimbursed for tips of $8.70 related to meal expenses. The HHSC Travel Policy and Procedures, Interim published in 2005 does not allow reimbursement of tips.

HHSC Uniform Contract Terms and Conditions, Version 1.4.1, Article 5, contains Section 5.02 CONTACTOR Responsibility for compliance with laws and regulations. Subpart (a) states that "CONTRACTOR is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including, but not limited to, all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions". This requirement is referenced in the TPCN contract in Section 2.06(a) (2) Agreement Documentation. As a result, Page 17 of the HHSC Travel Policy and Procedures provides guidance for "Unallowable Incidental Expenses which includes tips and gratuities. See Appendix C.

Recommendation:

Reimburse the disallowed headquarters meal expense of $32.99 and meal-related tips of $8.70 for a total of $41.69 to the HHSC-CAS Services. TPCN should also inform its employees of the need to comply with the HHSC Travel Policy and Procedures when conducting travel for activities related to the HHSC contract.

Management Response:

TPCN agrees with the finding of $2.70 of tips being disallowed, and regrets that this error was made. However, it is notable that this error is only 0.00003375% of the audited contract. The staff person who sought reimbursement for the tip is no longer with TPCN, but all remaining staff have been reminded of this policy.

TPCN disagrees with the remaining disallowed amount of $38.99 for numerous reasons, including but not limited to the following:

1. ***Program Funds Not Used.*** *The $38.99 of expenses was for non-program related expenses made from funds that were not received from HHSC. It was used to pay for a lunch with a TPCN representative to speak with a representative from another organization about potential partnering in future programs and initiatives. The funds used were either received from private donations, or received from TPCN's Service Providers as part of TPCN's Program Advancement Fee in order to enlarge and enhance alternatives to abortion services. As discussed in TPCN's response to "Finding" 1, these funds are 100% validly earned when received by service providers. OIG's recommendation is a chilling overreach of governmental authority in that it wants to subject non-governmental funds to scrutiny and regulation. Just as OIG has no authority to dictate how its employees or TPCN's employees spend their paychecks, it does not have authority to regulate or dictate funds that are not received from government programs. These funds are not subject to audit by HHSC or OIG, and are not subject to HHSC's Travel Policy and Procedures.*

2. ***Historical Transparency.*** *TPCN has been operating the program since the program's inception, and has been 100% transparent about the Program Advancement Fee. Every contract manager has received extensive education on what the fee is, how it is calculated, how it is collected, what the funds are used for, and where the Service Provider contract refers to it. Neither the Program Advancement Fees nor private donations have ever been questioned by HHSC since the funds are private monies when conveyed to TPCN. They are not subject to scrutiny, regulation or audit by OIG.*

3. ***Materiality.*** *The $2.70 non-compliance issue is not even material to the contract. It is 0.00003375% of the audited contract. TPCN questions whether it was a waste of taxpayer dollars to spend 9 months to conduct an audit that turned up $2.70 of noncompliance on an $8 million contract.*

Auditor's Follow Up Comments:

TPCN provided documentation indicating the meal expense of $32.99 and related tip expense of $6.00 was charged to the corporate account and not to the state contract. However, OIG was unable to distinguish the source of the funds used to reimburse the staff person for the meal and related tip expenses.

OTHER ISSUES: CONSIDER STRENGTHENING PERFORMANCE MEASURES

As noted in the Background section of this report, Section 50 Special Provisions Article II, S.B. 1 79th Texas Regular Legislative Session required the contractor to provide for clearly defined goals supported by detailed task requirements and performance measures. Exhibit C of the contractual agreement between the HHSC and TPCN for Program and Administrative Services serves as the means to fulfill this requirement as follows:

1. **TPCN 1-1 Monthly Management Reports**: Due at execution.
2. **TPCN 2-30 Project Work Plan**: Thirty days from execution.
3. **TPCN 3-30 Reporting Plan**: Sixty days from execution.
4. **TPCN 4-60 Monitoring Plan**: One hundred eighty days from execution.
5. **TPCN 5-120 Defined List of Services Providers**: One hundred eighty days from execution.
6. **TPCN 6-180 Outreach Material Plan**: One hundred eighty days from execution.
7. **TPCN 7-180 Education Material Plan**: One hundred eighty days from execution.

Few objectives are quantified. The lack of quantified objectives can impact the HHSC-CAS staffs' ability to measure program success or failure.

Further, the scope for this audit represents the fourth and fifth years of the contract between HHSC-CAS and TPCN; therefore, HHSC-CAS and TPCN should evaluate the need to continue the practice of allowing 30, 60 and 180 days to complete deliverables which should be in place for an established, ongoing contract as listed in Items 1-7 above.

We recognize that TPCN gathers and reports information on encounters; however, the information gathered is not measured against a specific objective. We found no means to measure or evaluate the productivity of the program in relation to the potential population to be served.

Consideration:

We recommend that HHSC-CAS and TPCN implement a collaborative approach to create measurable contract deliverables and write them in Exhibit C. Quantifying and measuring deliverables and reporting contract performance will improve accountability. We offer the following items for consideration:

a. Complete Item 2 as part of the budget proposal.
b. Items 4, 5, and 7 should represent ongoing deliverables of the contract and not be based on the execution date of the contract.
c. Include performance reports that will indicate the number of eligible participants served and the impact of TPCN on the eligible population,
d. Develop a means to measure the success/accomplishments of TPCN; and
e. Prepare monthly versus periodic reports that address each deliverable.

CONSTITUENT CONCERNS

The OIG received a constituent letter dated May 10, 2012 that raised concerns regarding the renewal of the TPCN contract and related increase in funding of the contract. The concerns included:

- Whether TPCN medically unlicensed subcontractors were adhering to the rules in the Alternatives to Abortion guidelines,
- Whether unlicensed subcontractors (service providers) are reimbursed at rates equal to or higher than the licensed employees and contractors of other agencies.
- A request for a complete audit to include a review of administrative expenses, services provided under the contract, and
- Whether subcontractors are seeking reimbursement for services provided that violate the Federal Charitable Choices Act.

The audit addressed the following issues in the constituent letter as noted below:

Issue 1. The first constituent issue was that medically unlicensed subcontractors who receive state funds violate the Alternatives to Abortion guidelines on a regular basis. However, OIG found that the service provider application process, the TPCN annual site monitoring visits and the quality control reviews of data supporting service provider periodic payments are primary methods to ensure compliance with Alternatives to Abortion guidelines. Further, non-licensed employees receive training on how to conduct referrals and mentoring. Non-licensed persons provide referrals as part of the counseling and mentoring process. Non-licensed persons provide a listening ear during the pregnancy counseling based on training received from their respective service provider, the service provider's organizational policies and procedures as well as TPCN program guidelines.

Issue 2. The second constituent issue was that unlicensed subcontractors (service providers) are reimbursed at rates equal to or higher than the licensed employees and contractors of other agencies. The OIG audit found that no distinction is made in reimbursement rates paid to TPCN service providers for services provided to eligible clients. The TPCN payment schedule is based on type of service provided, not whether the person providing the service is licensed. If the service provider chooses to use a licensed professional, the service provider is required to maintain a copy of the licensed professional's credentials on file. The credential information is reviewed as part of the site monitoring review. Additionally, service providers provide copies of licenses at the time the service provider submits an application to TPCN in order to participate in the program.

Issue 3. The third constituent issue was that there is no audit to ensure that the services subcontractors (service providers) provide and are paid are actually delivered. Our review of internal controls included a discussion of the service provider payment process. The service provider reimbursement requires one invoice per day, per counselor, per person. If a client sees two counselors, two sets of documentation must be submitted. During the audit period, scantron forms were mailed to TPCN. Each form was hand checked. Any errors found were returned by TPCN Quality Control to the service provider for correction. The service provider had to correct and resubmit the forms to TPCN within nine days. Items were rescanned and if correct, they were processed for payment. Errors not corrected were denied payment. Additionally, if the site monitoring visits identified client activities that did not comply with program requirements, those transactions were subject to payment denial. Then, as is the case currently, a payment denial will be deducted from a future billing. During the month-end closing, the accountant coordinates with quality control staff to identify any deletions (denials) for invoices that could be the result of a site monitoring visit or other reasons in order to ensure proper payment. The executive director also reviews the billings submitted by

the service providers to ensure that a provider will not exceed its maximum reimbursable amount for the contract year.

Issue 4. The fourth constituent issue raised concerns that services provided by the subcontractors are in violation of the Federal Charitable Choices Act (CCA). The intent of the CCA is to ensure that there is no overlap in TPCN Program services and faith-based services. Further, all services should be provided on a voluntary basis. The monitoring visit ensures that program services are delivered separately from faith-based services. The client can sign a spiritual request form indicating that the client has voluntarily requested spiritual counseling.

Additionally, if a person requests spiritual counseling in addition to program counseling, two different counselors handle the case; one for program services and one for spiritual services. The site monitoring tool provides the following compliance check points:

a. Review of the service provider's Spiritual policy complies with CC-FBG.
b. Review of client intake forms for completion of demographic and eligibility information.
c. Review of client consent forms for spiritual counseling; questions related to the spiritual services and is the correct information recorded on the billing invoice.
d. Review of corporate administration to ensure the Spiritual policy complies with CC-FBG.

APPENDIXES

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objectives of the audit were to determine if TPCN complied with the terms and conditions contained within its contract with the Texas Health and Human Services Commission, Office of Community Services for implementing the Texas Alternatives to Abortion program and to address concerns contained in a constituent letter dated May 10, 2012.

This audit was conducted under the authority granted to OIG-Audit in the Texas Government Code, Sections 531.102(h) (4) and Section 531.02414.

Scope

The engagement covered the period from September 1, 2009 through August 31, 2011. During the engagement, OIG did not review all internal controls. OIG limited the internal control review to the objectives described above.

Methodology

The methodology employed during this performance audit included objectively reviewing and analyzing various forms of documentation, conducting interviews and observations, and other tests necessary to achieve the objectives of the audit. During the engagement, OIG interviewed management and administrative personnel and performed tests of accounting records, as well as reviewed the following documents:

- Independent Audit Reports
- Contracts
- Policies and Procedures
- Accounting records and invoices
- Data Input Documents for the RAPID System
- Wire Transfer Reports from Frost Bank
- Notes taken related to interviews conducted with provider's management and staff
- Policies and procedures to ensure compliance by TPCN with contract requirements

Criteria Used

- Section 50 Special Provisions Article II, S.B. 1 79th Texas Regular Legislative Session
- Texas Government Code, Section 531.102(h)(4)
- Texas Government Code, Section 531.02414
- Contractual requirements to include HHSC Uniform Contract Terms and Conditions, Version 1.4.1, Article 5, Section 5.02 (a)
- HHSC Travel Policy and Procedures

Team Members

Bobby Lane, CFE, CICA, Manager, Contract Audit Unit
Janell Burks, MBA, Auditor, Contract Audit Unit

APPENDIX B

Management Comments: Management's comments in their entirety are included on pages 14 – 19, Appendix B, of this report.

TEXAS PREGNANCY CARE NETWORK

****UPDATED RESPONSE TO PRELIMINARY FINDINGS****
--NOT INTENDED FOR PUBLIC RELEASE--

March 27, 2012

HHSC Office of Inspector General
Attn: Bobby Lane
Compliance Audit/Mail Code 1343
PO Box 85200
Austin, TX 78708-5200
Via Email Only to Bobby.Lane@hhsc.state.tx.us

Re: Updated Response to Preliminary Findings Report - Office of Inspector General ("OIG") Audit of Texas Pregnancy Care Network ("TPCN")

Dear Bobby,

TPCN offers this response to the OIG's DRAFT findings dated March 8, 2013:

RESPONSE TO FINDING 1: DISCONTINUE SERVICE PROVIDER SURCHARGE

Texas Pregnancy Care Network ("TPCN") disagrees with this "Finding".

TPCN is a private non-profit corporation that serves as the prime contractor with Texas Health and Human Services Commission ("HHSC") to operate the Texas Alternative to Abortion Services Program (the "Program"). TPCN has operated the Program since its inception in 2006, and has served over 70,000 clients. At the end of Fiscal Year 2012, the Program has 50 service provider locations in all 11 HHSC regions of Texas. Since its inception, clients from 182 different counties have been served by the Program.

TPCN is a very small and lean non-profit organization that maintains the highest standards of accountability and transparency. Some examples include, but are not limited to the following:

- Since 2009, TPCN has held the Seal of Excellence®, in recognition for meeting the highest standards of ethics and accountability in its nonprofit governance, management, and operations. The Standards for Excellence Institute is a national initiative that promotes the highest standards of ethics and accountability in nonprofit governance, management, operations, and facilities. TPCN is the first nonprofit organization in Texas to earn the Seal of Excellence distinction. A national peer review team of nonprofit experts evaluated TPCN for compliance with 55 standards comprising the Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector, designed by the Standards for Excellence Institute®.

- Since the Program's inception, TPCN has delivered an annual perfect audit by an accredited independent accounting firm to both HHSC and the OIG. The audit has been conducted using generally accepted accounting principles and has also been conducted in accordance with A-133 Government Auditing Standards. The report clearly and transparently presents TPCN's financial statements in a standardized format required by federal government reporting standards.

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- Since the Program's inception, the contract administrative staff at HHSC regularly conduct onsite reviews at TPCN. These reviews include examination and explanation of all of TPCN's accounting policies and procedures, including the Program Advancement Fee structure that OIG is now recommending be discontinued.

OIG incorrectly refers to the Program Advancement Fee as a surcharge. This reflects both an incorrect understanding of both the nature of the fee, and the nature of the funds from which the fee is derived. The Program Advancement Fee was originally put in place by TPCN for two primary purposes: i) to provide a funding source when HHSC is late in paying monthly invoices, and ii) to provide a funding source for TPCN expenses that are not related to the Program.

In regard to the first reason, HHSC has taken over 30 days to pay TPCN's monthly contract allocation twenty-four times since November 2009. When this occurs, TPCN must either find an alternative funding source to pay its ongoing obligations or it must shut down and lay-off staff. A shut down would obviously be an impractical way to run a statewide program. TPCN most certainly does not want to contribute to continuing high unemployment so it must find a way to continue to operate when HHSC pays late. The Program Advancement Fee provides a source of reserve funding for TPCN to continue to meet its monthly obligations when HHSC inevitably pays its invoices late.

In regard to the second reason, TPCN is a private non-profit corporation that has expense associated with its ongoing upkeep and maintenance for its board of directors and general management. It also has expenses associated with funding projects and programs not directly related or chargeable to the Texas Alternative to Abortion Services Program under state and federal guidelines. The HHSC/TPCN contract is a direct charge contract and has no allowance for a surplus built in and so has no provision for TPCN to meet these expenses. In the past, the Program Advancement Fee has been used for keeping stakeholders in Texas and elsewhere informed about performance of the Program success; development of custom educational material for pregnant clients that can be used in the Program and elsewhere; meetings with potential private donors to increase growth in services to clients; meetings with other organizations that may partner with TPCN to develop new programs and initiatives; meetings to educate potential board members about TPCN and the Program; costs to pay for the development of responses to state requests for proposal; and other required tasks to develop and enhance the Program and TPCN's other initiatives that are in keeping with TPCN's mission. None of these expenses are allowed to be charged to the Program under state or federal rules.

The expenses charged to the Program Advancement Fee cannot simply be added to the administrative expenses of the Program. The Program's administrative expenses for the audit period were a very low 9.3%, not 10% as the OIG states. Expenses charged against TPCN's Program Advancement Fee should not and cannot be charged to the Program, and OIG is incorrect in suggesting this.

TPCN is baffled by this "finding" from the OIG for the following reasons:

1. **Finding 1 is not a finding of non-compliance.** "Finding" 1 does not present any finding of noncompliance with the TPCN/HHSC contract. In fact, the Program Advancement Fee is not in any way a contract violation or a violation of HHSC policies. If a finding was actually presented, OIG would ask for the Program Advancement Fee to be returned to HHSC. Obviously, it did not.

2. **The Program Advancement Fee is structured to save Texas taxpayers money.** Once a service provider receives its monthly reimbursement for services provided to eligible Program clients, these funds are 100% earned (because the services have already been provided), and legally become a part of the service provider's general revenues, along with all of its donations from private sources and other funds. It is from this general compilation of funds that the Program Advancement Fee is paid to TPCN from Service Providers. Service providers agree to cover those costs because they are the entities earning the vast majority of the funds under the Program and which benefit directly from continuation of the Program and its growth. OIG would have

Texas taxpayers pay for these additional costs. Texas taxpayers should NOT have to pay these additional costs since they are already paying the direct costs of the services.

3. **Not within stated scope and objectives of audit.** Based on the many references above, OIG has very clearly defined its audit objectives as twofold: (i) determine if TPCN complied with the terms and conditions of its contract with HHSC, and (ii) address concerns contained in a constituent letter dated May 10, 2012. OIG accomplished its second stated objective of addressing concerns contained in a constituent letter in the final section of its report. However, OIG veered from these objectives in its first "Finding". Other than a finding of a $2.70 gratuity, and a TPCN-disputed finding of a meal and gratuity of $38.99, no other areas of non-compliance are identified in the entire report. Instead, "Finding" 1 identifies recommendations and considerations for TPCN that are outside the stated scope and objectives of the audit.

4. **Replicating the Pennsylvania Model.** TPCN was successful in procuring the original contract and the renewal specifically because it was able to license the Pennsylvania program from Real Alternatives. HHSC wanted to ensure that the program was successful, and it studied the Pennsylvania program and knew that it had withstood public scrutiny, media scrutiny, and regulatory scrutiny. Therefore, TPCN was charged with replicating the Pennsylvania program in Texas. Real Alternatives licenses its program to TPCN and TPCN operates the program exactly as Real Alternatives does. In fact, Real Alternatives introduced the Program Advancement Fee model to TPCN, and contractually requires that TPCN use it. Real Alternatives has the following to say about OIG's "Finding" 1: "*We find it unusual a government audit would be penalizing TPCN for enhancing a state program with private funds, giving the program financial cash flow protection, as well as ensuring complete ethical and scrupulous contract compliance. In fact, the Pennsylvania Department of Public Welfare remarked the Program Development and Advancement Contract Language was a good idea and they believed it 'was none of their business anyway' since the Service Providers agreed to pay the fee AFTER they earned their funds monthly from the statewide program.*"

5. **RAPID contract <u>is</u> a fee for services contract.** The report states that TPCN should acquire Real Alternatives services through a fee for services contract. In fact, the contract between TPCN and Real Alternatives is a fee for services contract, which is paid monthly for the use of the billing and program system. This fee was approved by HHSC in both contracts with TPCN.

6. **Program Advancement Fees are grossly overstated by OIG.** The report states that "TPCN deducted three percent or approximately $346,300.00 from the service provider's total invoices for the audit period". TPCN actually deducted the service provider agreed three percent or $181,847.17 from the service provider's total invoices for the audit period. This number can be supported by taking 3% of the total amount of client reimbursement for the audit period listed in TPCN's audited financials. It is unclear why OIG's calculation of the expense was not validated in this manner.

7. **Trouble with math in the report.** The report correctly states that one percent of the Service Provider reimbursement is used to pay Real Alternatives its license fee. However, when calculating the payment, the report uses two percent and states the amount to be $244,600 (should have been $101,700 if percentages correctly allocated). The report correctly states that two percent of the Service Provider reimbursement is used for TPCN's Program Advancement Fees. However, when calculating the payment, the report uses one percent and states the amount to be $101,700 (should have been $244,600 if percentages correctly allocated). In reality, one percent of the Service Provider's reimbursement, or $60,615.64, was paid to Real Alternatives during the audit period for its license fee and two percent of the Service Provider's reimbursement, or $121,231.53, was transferred into TPCN's Program Advancement funds during the audit period.

8. **HHSC has been aware of Program Advancement Fee since Program's inception.** The Program Advancement Fee is not new. It has been discussed and explained in depth to HHSC's program management

staff on a regular basis since the Program's inception. HHSC has never voiced any concerns about this structure.

9. **OIG has received independently audited financial statements from TPCN since the Program's inception.** TPCN submits its audited financial statements directly to OIG annually. If OIG had any questions about the financial policies and structure of TPCN as presented in TPCN's financial statements, it should not have waited seven years to ask them. TPCN would assume that OIG's silence indicates that it had no concerns about the financial dealings of TPCN.

OIG's recommendation to discontinue the Program Advancement Fee is a chilling overreach of governmental authority in that it wants to subject non-governmental funds to scrutiny and regulation. Just as OIG has no authority to dictate how its employees or TPCN employees spend their paychecks, it does not have authority to regulate or dictate funds that are not received from government programs. The Program's service providers validly earn 100% of their funds prior to their reimbursement. Once those funds are received, they are not subject to audit by HHSC or OIG, and are not subject to HHSC's Travel Policy and Procedures. For all of the reasons stated above, TPCN disagrees with "Finding" 1.

RESPONSE TO FINDING 2: ENSURE COMPLIANCE WITH TRAVEL POLICY AND PROCEDURES

TPCN agrees with the finding of $2.70 of tips being disallowed, and regrets that this error was made. However, it is notable that this error is only 0.00003375% of the audited contract. The staff person who sought reimbursement for the tip is no longer with TPCN, but all remaining staff have been reminded of this policy.

TPCN disagrees with the remaining disallowed amount of $38.99 for numerous reasons, including but not limited to the following:

1. **Program Funds Not Used.** The $38.99 of expenses was for non-program related expenses made from funds that were not received from HHSC. It was used to pay for a lunch with a TPCN representative to speak with a representative from another organization about potential partnering in future programs and initiatives. The funds used were either received from private donations, or received from TPCN's Service Providers as part of TPCN's Program Advancement Fee in order to enlarge and enhance alternatives to abortion services. As discussed in TPCN's response to "Finding" 1, these funds are 100% validly earned when received by service providers. OIG's recommendation is a chilling overreach of governmental authority in that it wants to subject non-governmental funds to scrutiny and regulation. Just as OIG has no authority to dictate how its employees or TPCN's employees spend their paychecks, it does not have authority to regulate or dictate funds that are not received from government programs. These funds are not subject to audit by HHSC or OIG, and are not subject to HHSC's Travel Policy and Procedures.

2. **Historical Transparency.** TPCN has been operating the program since the program's inception, and has been 100% transparent about the Program Advancement Fee. Every contract manager has received extensive education on what the fee is, how it is calculated, how it is collected, what the funds are used for, and where the Service Provider contract refers to it. Neither the Program Advancement Fees nor private donations have ever been questioned by HHSC since the funds are private monies when conveyed to TPCN. They are not subject to scrutiny, regulation or audit by OIG.

3. **Materiality.** The $2.70 non-compliance issue is not even material to the contract. It is 0.00003375% of the audited contract. TPCN questions whether it was a waste of taxpayer dollars to spend 9 months to conduct an audit that turned up $2.70 of noncompliance on an $8 million contract.

RESPONSE TO OTHER ISSUES: CONSIDER STRENGTHENING PERFORMANCE MEASURES

TPCN disagrees with this "Other Issue" for numerous reasons, including but not limited to the following:

1. **Criticism of HHSC, not TPCN.** OIG stated numerous times in discussions about this issue that this issue was a criticism of HHSC, and not of TPCN, because HHSC was ultimately responsible for drafting and structuring the contract requirements. It is confusing then why it was included in TPCN's audit report, instead of conveyed to HHSC in some sort of inter-department memo or in an audit report critiquing HHSC's contract drafting and management.

2. **Errant Statement: "Few Objectives are quantified".** TPCN's objectives are quantified. The auditors are again directed to examine TPCN's extensive Quarterly Reports, all of which are subject to public inspection. This report provides quantifiable reports of numbers of clients served, numbers of visits to Service Providers, number of visits to the TPCN website, number of calls to the toll-free number, number of professionals educated about the program, number of sites participating in the program, percentage of clients stating that they felt supported, number of clients attending classes on numerous topics (parenting, pregnancy, family support, etc.), number of clients that were counseled on numerous topics (breastfeeding, anger management, fetal development, etc.), and number of clients receiving adoption education.

3. **Contract Deliverables were specifically designed by HHSC Legal Team.** The specified contract deliverables were specifically requested and designed by the HHSC legal team when the contract was first negotiated. When the contract was renewed, the exact same deliverables were kept as part of the contract by the HHSC legal team. TPCN has always fully complied with the contract deliverables HHSC requires.

4. **Course of Dealing.** TPCN has been operating the program since the program's inception, and has been 100% transparent about the Deliverables. HHSC has never had an issue with the Deliverables listed in the contract.

5. **Contract Deliverables are Measurable.** Each deliverable has a specified due date and is met according to its due date.

6. **Quarterly Reports Indicate Numbers of Participants and Impact.** The Quarterly Reports clearly "indicate the number of eligible participants served and the impact of TPCN on the eligible population" despite the report saying the contrary.

7. **Reports do Measure Successes.** The Quarterly Reports and the Monthly Reports clearly "measure the success/accomplishments of TPCN" despite the report saying the contrary. In addition to all of the data in the Quarterly Reports, the Monthly Reports convey the successes, accomplishments, and compliance efforts that TPCN makes on a monthly basis. Finally, TPCN also provides actual client success stories from real clients (with the clients' names changed) that convey real-life success stories of the Program.

8. **Monthly Reports Address Deliverables.** On a monthly basis, TPCN provides HHSC with a vendor activity report, and a summary financial statement. This information does "address each deliverable" despite the report saying the contrary.

CONSTITUENT CONCERNS

TPCN agrees with this section in full.

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In sum, TPCN agrees with $2.70 of Finding 2 and agrees in full with the Constituent Concerns section of the report. TPCN disagrees with all other areas of the report.

Sincerely,

TEXAS PREGNANCY CARE NETWORK

John McNamara, Executive Director

SCHEDULE OF FINDINGS

Expense Category	Date of Voucher	Questioned Cost	Total
Tips			
Employee 1.	10/19/2009	$2.70	2.70
Employee 2.		$6.00	$6.00
Meals			
Employee 2.	03/30/2010	$32.99	$32.99
Totals		$41.69	$41.69

REPORT DISTRIBUTION

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